HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

No. W.P. No. 718 of 2004 M/S
(Old No. 11497/1988)

Sh. Bache Singh S/o Sh. Shiv Singh
vs

District Judge, Almora
and others.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 15.9.2004.

Initial of Judge

HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 718 (MS) of 2004
(Old No. 11497/1988)

Sh. Bache Singh
S/o Sh. Shiv Singh
R/o Village Bamanpuri
Patwari Circle Dwarahat
Tehsil Ranikhet
Dist. Almora ..... Petitioner.

Vs

Dist. Judge, Almora
And others. ..... Respondents.

Counsel for the petitioner Sh. J.C. Joshi
Standing Counsel for the respondents.

Dated:15-9-2004

Hon'ble Rajesh Tandon J.

Heard Sh. J.C. Joshi learned counsel for the petitioner and Standing counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ, order or direction in the nature of certiorari quashing the impugned orders dt. 30-6-1987 and 9-5-1988.

Briefly stated that the petitioner is the owner in possession of plot No. 5252 and 5258 area 4 nali 16 muthi of village Bamanpuri Tehwil Ranikhet District Almora and the said land has been in his possession and cultivation for the last about sixty years.

The petitioner has submitted that he constructed this house for rental purposes and has invested all his funds for raising his livelihood. The notice was sent under Section 4(1) of the U.P. Public Premises (Eviction of unauthorized occupants) Act 1972. The petitioner has replied the said notice by stating that he has constructed the house over his own land and has constructed the same with the

permission of Sub-Divisional Magistrate Ranikhet. The Prescribed Authority vide order dt. 30-6-1987 passed the order under Section 5 of the U.P. Public Premises (Eviction of Un-authorized Occupants) Act 1972 and has also imposed Rs. 400.00 for damages. Aggrieved by the aforesaid order the petitioner went in appeal, which was also dismissed on 9-5-1988.

According to the counsel for the petitioner he is not an unauthorized occupant.

The petitioner has raised the question that the land in question is an agricultural land and the same is not covered under the U.P. Public Premises (Eviction of Unauthorized Occupants) Act 1972.

Counsel for the petitioner has argued on the basis of the Judgment of Baldwo Raj Vs. State of U.P. reported in 1984 ALL. L.J. 872 as well as the Judgment in the case of Harish Chandra Vs. State of U.P. reported in 2002 (1) ELC page 508 (H.C.), where the matter has been sent back to the prescribed authority for deciding the matter as a fresh.

In Baldeo Raj VS. State of Uttar Pradesh and others 1984 All. L.J. 872. The observations are quoted below:-

> *"Learned counsel for the petitioners submitted that, in view of the definition given to the expression "public premises" in the Act, the Prescribed Authority did not have the jurisdiction to direct the eviction of the petitioners in proceedings initiated under this Act. The argument advanced in that upon the averments contained in the notice itself, and as set up by the opposite parties before the authorities below, it would appear that that land is covered under the provisions of the U.P. Zamindari Abolition and Land reforms Act and, therefore, the recourse, if any, to evict the petitioners could be*

had under the provision thereof. The expression ' public premises' in Section 2(e) of the Act was amended by the U.P. Act 28 of 1976. The definition as amended excludes " land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures". This is so specified in cl. (i) of the definition appearing in S. 2(e) of the Act. In view of the provision contained in S. 4/6 U.P. Zamindari Abolition and Land Reforms Act, 1950, the right, title or interest of the intermediates came to be vested in the State and the State thereby also acquired right, title or interest over the land held as ' Talab ' or Jheel'. Section 117, U.P. Zamindari Abolition and Land Reforms Act, makes it clear that the superintendence, management and control of such land is vested in the Gaon Sabha. The State Government is empowered also thereunder to transfer this superintendence, management or control from the Gaon Sabha to some other local authority or vice versa. In the extract of Khatauni in 1383-85 fasli relief for the respondent, the land in question is shown as recorded 'talab'/Jheel' . The extract of khasra of 1386 Fasli is also referred to in this behalf . The Appellate Authority has, in fact, treated this land as pertaining to 'talab'/'Jheel' . The petitioners are recorded in the Khasra of 1386 fasli under class 4. Reference to the U.P. Land Records Manual shows that this class is meant to denote land held as occupier without title when there is no one already recorded in column 4 of the khasra." Law relating to tenures, namely that contained in the U.P. Zamindari Abolition and Land Reforms Act makes ample provision for eviction against those who are alleged to have stepped in unauthorised occupation over such land. section 122-B for instance entitled

the Gaon Sabhla to evict such person on proceeding being initiated as envisaged therein. In order to avoid a conflict of jurisdiction arising between the powers conferred under that Act and the power under the Act, referred to above, the definition given to the expression 'public premises' has deliberately excluded from its purview land vesting in the Gaon Sabha or some other local authority for which provision exists in the law relating to land tenures."

Similar view has been taken by the Uttaranchal High Court in the case of Harish Chandra Vs. State of U.P. reported in 2002 (1) E.L.C. page 508 (H.C.) and it has been observed as under:-

"6 In the present case, the disputed land is admittedly used by the petitioners for the purpose of agriculture as is evident from the statement on record that the petitioners are in occupation since 13.80 Fasli. The U.P. Zamindari Abolition and Land Reforms Act itself provides procedure for eviction of unauthorized occupants under section 122-B of the U.P. Zamindari Abolition and Land Reforms Act. The agriculture land is not covered under the U.P. Public Premises (Eviction of Unauthorized Occupants,) Act, as is evident from the definition of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972, which reads as under:-

" 2(b) 'Premises' means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes: -

(i) the garden, grounds and out houses, if any, appertaining to such buildings or part of a building; and

(ii) any fittings or fixtures affixed to or any furniture supplied with such buildings or part of a building for the more beneficial enjoyment thereof.

But does not include land which for the time being is held by a tenure holder under any law relating to land tenures."

'2 (e) 'Public Premises, means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government and includes any premises belonging to or taken on lease by or on behalf of-

(v) any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty-one percent of the paid up share capital held by the State Government ;or

(vi) any local authority:

(vii) any Corporation(not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government ;

(viii) any society registered under the Societies Registration Act, 1860, the government body whereof consists , under the rules or regulations of the society, wholly or public officers, or nominees of the State Government or both;

and includes:-

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building build with Government funds on land belonging to the State Government after the entrusted of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures.

(ii) Any premises acquired under the land acquisition act 1894, with the consent of the State Government for a Company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions."

In view of the aforesaid proposition of law, the matter is sent back to the Prescribed Authority for deciding the case afresh on the basis of the evidence on record. The petitioner as well as respondents both are permitted to lead additional evidence in order to show that the land is covered under Gaon Sabha or not.

The Prescribed Authority shall also consider as to whether the petitioner is entitled for regularization for which Notification has been referred to. Accordingly, the writ petition stands allowed and matter is sent back to the Prescribed Authority for deciding the matter afresh in the light of the observations made above.

Dated:- 15-9-2004 **(RAJESH TANDON J.)**

M.K.